

TEXACO U.S.A. ET AL.

IBLA 84-288

Decided July 11, 1984

Appeal from a decision of the Alaska State Office, Bureau of Land Management, accepting appellants' high bids offered for tracts in competitive oil and gas lease sale No. 831.

Vacated and remanded.

1. Notice: Generally -- Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Stipulations

Where a competitive oil and gas lease imposes additional stipulations without prior notice to the offeror, the offeror may accept or reject the lease containing the additional stipulations. The imposition of additional stipulations without notice to the offeror defers the 15-day period in 43 CFR 3132.5(e) until the offeror has notice of the stipulations to be included in the lease.

APPEARANCES: G. F. Clarke, Los Angeles, Calif., for appellants Texaco U.S.A., Inc., Getty Oil Company, and Placid Oil Company; Mark K. Seifert, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Appellants appeal from a January 17, 1984, decision of the Alaska State Office, Bureau of Land Management (BLM), accepting appellants' high bids offered for tracts 27, 28, and 29 in Alaska competitive oil and gas lease Sale No. 831.

BLM's decision required that before the leases could be issued, appellants must sign and date lease form 3130-7 and remit the balance of the bonus bids due and the first year's rental payment of \$1,685,438.32. Furthermore, BLM's decision mandated that the leases "will be subject to the [attached] order of the Ninth Circuit Court of Appeals." BLM subjected appellants' leases to the decision in Kunaknana v. Clark, No. 83-4325 (9th Cir. Jan. 13,

1984). <sup>1/</sup> BLM's decision indicated that appellants' bids would be declared forfeited without further notice if these requirements were not met within 15 days of appellants' receipt of the BLM decision.

In Kunaknana, the Ninth Circuit denied plaintiff's motion to enjoin execution of leases pending an appeal. However, the Court did enjoin defendants "from taking any action on the leased tracts that would substantially and adversely affect subsistence use pending further order of this court. Such action would include, but is not limited to, exploratory drilling."

[1] BLM's decision, in expressly subjecting the leases to the Ninth Circuit's order in Kunaknana, imposed upon the leases a special stipulation not set forth in the notice of sale as mandated by 43 CFR 3131.3. Subpart 3131.3 provides in part: "Any special stipulations and conditions shall be set forth in the notice of sale and shall be attached to and made a part of the lease."

The notice of sale failed to set forth the special stipulation that the lessees would be barred from conducting any exploratory drilling or taking any action on the tracts covered by the leases which would substantially and adversely affect subsistence use. Appellants bid for leases which could be explored and developed, but have been offered leases which prohibit any exploratory or development activities which would substantially and adversely affect subsistence use. Therefore, the leases encumbered with the special stipulation not set forth in the notice of sale vary from those sought by appellants.

BLM's decision conditioned the issuance of the leases upon receipt of payment of the balance of the bonus bids and the first year's rentals within 15 days. However, the 15-day period may be deferred. Thus, 43 CFR 3132.5(e) provides in part: "The bidder shall, not later than the 15th day after receipt of the lease, sign both copies of the lease and return them, together with the first year's rental and the balance of the bonus bid, unless deferred, and shall file a bond, if required to do so." (Emphasis added.)

Here, BLM should have deferred the 15-day period until the litigation has resolved the matter. BLM simply should have suspended further action until the litigation concludes. An extension of time should be given such that the 15-day period does not begin to run until the litigation concludes. See, e.g., Copper Valley Machine Works v. Andrus, 653 F.2d 595 (D.C. Cir. 1981); Sierra Club, 80 IBLA 251 (1984). The litigation effectively suspends the appellants' obligations until the litigation concludes; and until appellants have proper notice as to the stipulations to be included in the lease. It would be error for BLM to compel appellants to pay for the leases without having the benefit of their use, while also allowing time to run on the primary terms of the leases.

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<sup>1/</sup> BLM's prior decision of Oct. 4, 1983, in this matter noted that the United States District Court for the District of Alaska issued a memorandum and order on July 19, 1983, barring execution of leases from Sale No. 831. BLM's Oct. 4, 1983, decision went on to inform appellants that their high bids on tracts 27, 28, and 29 were accepted, but that lease execution is contingent on a final decision by the court permitting execution.

This Board has held that an oil and gas lease offeror could not be bound by leases containing terms of which the offeror did not have either constructive or actual notice before the issuance of the leases, in the absence of the offeror's consent to those terms. E.g., Frances Kunkel, 75 IBLA 199, 200 (1983); Harry K. Veal, 73 IBLA 86, 89 (1983); Robert P. Schafer, 71 IBLA 191, 192 (1983); Emery Energy, Inc., 64 IBLA 285, aff'd on reconsideration, 67 IBLA 260 (1982). The imposition of additional stipulations after the bidding is complete without prior notice to the offeror constitutes a counter offer. E.g., Frances Kunkel, supra; Harry K. Veal, supra; Robert P. Schafer, supra. Where an oil and gas lease is issued without notice to the offeror of additional stipulations, the lease is not binding on the offeror, and it is without effect in the absence of the offeror's consent to the additional stipulations. John D. La Rue, 66 IBLA 347, 348 (1982). Appellants may accept the leases within 15 days after notice from BLM that the litigation has concluded, or, if the restrictive stipulations remain, appellants may decline the leases and recover their bid deposits. However, as long as the judicial orders remain in effect enjoining any action on the tracts which would substantively and adversely affect subsistence, the leases must be subject to the stipulation.

While this opinion was in preparation, Departmental counsel entered an appearance on behalf of BLM and moved this Board to stay these proceedings to await the ruling of the United States Court of Appeals for the Ninth Circuit in Kunaknana v. Clark, supra, in which motion appellant has concurred. However, in light of our analysis of the case, the Board finds it unnecessary to stay our decision. The result will be determined by the outcome of the Kunaknana litigation in any event, and regardless of whether our decision issues now or is stayed, appellants are relieved of the necessity for immediate compliance with the BLM decision, which is the only relief they sought by this appeal. By deferring our disposition of the case, the Board would only perform the function of a warehouse.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case is remanded to BLM for further action consistent herewith upon final resolution of the litigation in Kunaknana v. Clark, supra, including all opportunities for appeal.

Edward W. Stuebing

Administrative Judge

We concur

James L. Burski  
Administrative Judge

C. Randall Grant, Jr.

Administrative Judge

